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Source: *Daedalus*, Vol. 140, No. 2, Race, Inequality & Culture, volume 2 (Spring 2011), pp. 215-225
Published by: The MIT Press on behalf of American Academy of Arts & Sciences
Stable URL: https://www.jstor.org/stable/23047463
Accessed: 24-11-2024 19:19 UTC

Immigration: The New American Dilemma

Roger Waldinger

On July 3, 1984, *The Wall Street Journal*'s editorial page called for a laissez-faire immigration policy, allowing labor to flow as freely as goods. In a salute to immigrants, the editors asked, would anyone "want to 'control the borders' at the moral expense of a 2,000-mile Berlin Wall with minefields, dogs, and machine-gun towers?" Answering "no," the editors instead proposed a constitutional amendment: "There shall be open borders."[1] In this manner, the *Journal* celebrated every July 4, until the events of September 11, 2001, made it difficult to adhere to the old-time libertarian faith. While American businesses and economists have continued to believe that more immigrants are better than fewer, most Americans see the matter differently. Much to the public's frustration, America's government has been unable to reduce immigration; only the Great Recession of 2009 managed to curb the flow of migrants crossing U.S. borders.

From the perspective of the developing world, migration controls imposed by the United States and other rich democracies are all too effective, deterring millions from sharing the good fortune enjoyed by the residents of wealthy countries. Given that people from the poorest countries have the most to gain from crossing borders, opening the doors even modestly would yield a significant benefit for the world's poor. In fact, if rich countries allowed their labor forces to rise by a mere 3 percent, the gains to citizens of poor countries

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would exceed the costs of foreign aid by a factor of almost five.[2]

However, the public in America and elsewhere in the West does not view the matter from the perspective of people in the developing world. Rather, the preferred course entails spending money to prevent migrants from moving across borders (in which case, their needs could not be so easily ignored). The United States spends almost $20 billion a year on immigration enforcement alone, amounting to 60 percent of its expenditures on foreign aid.[3] Still, for the lucky migrants who make it into the "promised land," getting through the door produces far more benefits than the aid targeted at those willing to accept their fate at home.

Unable to depress immigration to the level the public demands, the U.S. government has instead sought to demonstrate that *something* can be done: policy is aimed at fortifying the border, deporting immigrants, and building new walls separating U.S. citizens from their noncitizen neighbors. As a result, the "circle of the we" has narrowed, yielding a steady restriction of immigrant rights and an ever-growing gap between democracy and demography. Put differently, inequality between natives and foreigners is increasingly upheld by law; basic rights are beyond the reach of immigrants, who not only are deprived of membership, but often cannot obtain even a driver's license.

This is the shape of the new dilemma that America confronts. The older American dilemma – one that is not fully resolved – was distinctively American, rooted in the specific circumstances under which the country was established: that is, through coerced migration, enslavement, and the social construction of race that built and reinforced the boundary between free and enslaved. With the birth of the United States, practice and principle diverged, as continued racial oppression meant that America failed to implement the core principles it avowed. Ending racial exclusion entailed a struggle for citizenship, with the civil rights revolution extending citizenship to all individuals – not just those of European ancestry. Later, in the post–civil rights era, the cultural differences between Americans of various nationalities or ethnicities came to be seen as valued assets of a diverse society rather than foreign traits to be discarded. These changes notwithstanding, citizenship status and citizenship rights do not yet align perfectly: African Americans, as well as a variety of other groups, remain disadvantaged despite citizenship's promise of equality. Thus, America must hold true to its promise to ensure that all *Americans* are first-class citizens.

In that better America, the full privileges of citizenship would belong to *all* Americans; however, even an expanded, fully robust *American* citizenship would not extend rights beyond the water's edge. For that reason, international migration is a global dilemma, one that America and other rich democracies experience in similar ways. The older American dilemma was caused by "enduring anti-liberal dispositions" that were contrary to the country's founding principles.[4] By contrast, international migration involves a contradiction that is not specific to one nation but inherent to liberalism and the liberal nation-state, wherever it may be.

That contradiction stems from the fact that the liberal nation-state is the state, not of humanity at large, but rather *of*, *by*, and *for* some particular subset of humanity – namely, *the people*. The people may well be diverse, and a variegated population is always crisscrossed by conflict. It is also distinct from the other national peoples located beyond the state's borders.

Maintaining a national community *demands* that the people be bounded, lest there be no members with interests reflected in and represented by *their* state. However, those boundaries obstruct the path of migrants seeking to cross *national* borders in order to attain the most classical of liberal goals: getting ahead by virtue of their own effort. Keeping migrants out *requires* discrimination against those people who happened to have the bad luck of being born on the wrong side of the national border. The commitment to ration entries well below the levels that unhindered migration would produce *compels* selection of a favored few, chosen not on merit but on criteria designed to meet the needs and preferences of citizens. While states can try to control borders, that effort never fully succeeds. Consequently, the move to regulate flows across national boundaries *inevitably* produces a new category of person: namely, the "illegal" immigrant. Because the citizenry needs the stability and commitment that come with membership, passage across the internal boundary of citizenship is *never* guaranteed to all persons who happen to cross the territorial boundary. Hence, the admission of strangers *invariably* creates new forms of de jure inequality, separating citizens from aliens and distinguishing among aliens by virtue of their right to territorial presence. For these reasons, international migration confronts America with a new dilemma, producing a conflict of "right against right" from which no escape can be found.

Modern liberal states *could* follow the motto inscribed on the Statue of Liberty: "Give me your tired, your poor, your hungry...." In practice, none do; rather, the impulse to control immigration is nearly universal. In restricting immigration, the United States and other governments of the developed world are responding to their peoples' desires. As shown by the 2005 wave of the World Values Survey, opposition to free movement across borders is nearly universal: just 7.2 percent of residents surveyed from nations belonging to the Organisation for Economic Co-operation and Development (OECD) voiced support for the idea that their countries should "let anyone come," with Americans slightly less inclined to support open borders than Germans – even though the former considers itself a nation of immigrants and the latter long insisted that it was not a country for immigration. Indeed, almost half of all Americans wanted "strict limits," and 7.6 percent wanted an absolute ban on immigrants – making Americans more restrictionist than nationals elsewhere in the OECD, to say nothing of the Germans. The Pew Research Center's 2007 Global Attitudes Survey revealed the same pattern: the residents of rich democracies support foreign trade and free markets, but the idea that people should move as freely as goods has no appeal. Large majorities everywhere prefer rigorous controls: 75 percent of Americans thought that immigration should be further controlled and restricted, once again outdistancing Germans as well as residents of the remaining OECD countries.[5]

Americans not only view immigration similarly to nationals in other rich democracies; maintaining immigration control is one of the rare issues on which Americans themselves agree. Data from the 2004 International Social Survey Program, a multicountry survey coordinated with the U.S. General Social Survey, affirm that when it comes to migration policies, America is not exceptional. As Table 1 shows, 55 percent of Americans would like to see immigration reduced, proving themselves to be less

Table 1
Percent of Respondents Who Said Immigration Levels Should Be Reduced, Stay the Same, or Be Increased

	Immigration Levels Should:		
	Be Reduced	Stay the Same	Be Increased
U.S. Respondents			
All	55%	35%	10%
By Race/Ethnicity			
Whites	59	34	7
Blacks	54	33	14
Hispanics	37	38	24
By Ideology			
Liberals	43	44	13
Conservatives	62	31	7
By Party Affiliation			
Strong Democrats	50	33	17
Strong Republicans	64	31	5
Non-U.S. Respondents			
Germans	73	22	5
All Other OECD Countries	54	34	14

Source: U.S. data are from the 2004 General Social Survey. Data for other OECD countries are from the 2003 International Social Survey Program.

restrictionist than Germans but more restrictionist than the residents of all other OECD countries. Not all Americans share this opinion; however, divisions do not fall along the usual cleavages. Regardless of group or political affiliation, only numerical minorities – and small ones at that – favor expanded migration, a view endorsed by roughly a quarter of Hispanics, 17 percent of strong Democrats, and 14 percent of African Americans. By contrast, majorities of most categories – including whites, blacks, strong Democrats, and strong Republicans – favor reducing immigration; this view is held by more than one-third of Hispanics and more than four-tenths of liberals.[6]

Thus, the immigration policy preferred in today's democracies entails discrimination against foreigners on the wrong side of the border: it is what the people

want. Yet policy-makers and citizens alike understand that zero immigration is neither a feasible nor a desirable goal; they also realize that many more immigrants would arrive were there no controls at all. Hence, immigration policies in the United States and other developed countries are designed to keep the door only partially open, so as to select just a small portion of the many would-be immigrants ready to leave home for a brighter future abroad.

Today, selection takes a different form than it did when the last age of mass migration came to an end after World War I. Though the portals were never shut entirely, the lucky outsiders who gained entry after the war were almost always selected on the basis of national background; migrants with ethnic backgrounds similar to those of the nation's dominant groups were deemed most appealing. In the twenty-first century, selection by ethnic origin is in retreat, increasingly replaced by an alternative principle that sociologist Christian Joppke has called "source country universalism."[7]

In a sense, the end of ethnic selection was tied to the process by which America solved, or at least alleviated, its older dilemma. Ethnic selection fit poorly with the ideological environment that swept through rich democracies after World War II. As a result, the traditional settler societies – Australia, Canada, and the United States – all felt obliged to discard the ethnically driven policies they had put in place several decades before. For the United States, the 1924 National Origins Act, which drastically curtailed immigration from Southern and Eastern Europe and prohibited immigration from Asia, was an embarrassment, undermining the U.S. claim to lead the "free world." In 1965, the apogee of the civil rights movement provided the essential fillip needed to move to a different, more open system – albeit one that constrained options for legal immigration from Mexico.[8]

What is true of the United States generally holds for the rest of the developed world: policies discriminating on the basis of ascribed characteristics are, if not taboo, at least in retreat. As Joppke argues, liberal states seek neutrality when it comes to the ethnic or cultural differences among the *existing* people of the state. The same principle applies to *potential* members of the state. Thus, selecting on the basis of inborn characteristics – race, national origins, or ethnicity – no longer proves acceptable. The shift from ethnic to a more universal form of selection has transformed American immigration by producing a population with origins in the Americas, Asia, and, increasingly, Africa. Its advent inevitably will yield an America in which "minorities" will become the majority.

While selection on ethnic grounds may be obsolete, other forms of selection remain alive and well. Policies can use any number of selection criteria: these days, higher degrees or technical skills are the qualities preferred among those foreigners allowed to settle for good; by contrast, brawn suffices for the migrants allowed to move on a temporary basis to do dangerous, difficult, and dirty work – but who are then obliged to go home. Either option may be equally legitimate, though recruiting more foreign brains or cracking down on asylum seekers may raise the red flag of ethnic selection. However, to be acceptable, exclusion policy simply has to be applied universally, focusing not on the color of an immigrant's skin, but on the number and mix of immigrants most likely to advance a country's competitive position in today's global, interconnected world – and keeping out the rest. In-

deed, door-keeping is biased toward those foreigners who bring the most to the table: virtually all developed countries allow for temporary migration of skilled workers, and most encourage their permanent migration as well (which is to say that developed countries are keen on creaming the developing world). By contrast, impeding or barring permanent migration of unskilled workers is a widely shared goal.[9]

Put differently, citizens decide which aliens may enter. Residence is necessary to acquire citizenship; thus, existing club members determine the rules by which newcomers gain membership. For the most part, the rules reflect the preferences of people who did not obtain citizenship on merit, but rather inherited it as a birthright. Not surprisingly, the rules reinforce those privileges relative to those who want entry into the club. Club members have *some* obligation to admit persons in flight from persecution, whether found abroad (refugees) or on home soil (asylees); by and large, refugee admissions are kept tightly controlled. Otherwise, selection is based on what is good for club members: that is, brains or brawn for employers and nepotistic ties for ordinary citizens.

Discrimination against the aliens on the wrong side of the border is so natural as to be invisible; to many citizens, it hardly bears mention. Today, migrants "have a right to have rights," the basic fundament of citizenship famously described by Hannah Arendt in 1951; even the undesirables are no longer cast out of humanity as they were in the mid-twentieth-century world she depicted.[10] Lack of citizenship status no longer implies lack of citizenship rights. Still, the package of rights that the United States and other democratic states make available to *all* persons found on their soil is fairly limited.

Hence, inequality inheres in the relationship between citizens and foreigners, whether resident or visiting. Rights and entitlements further vary depending on status. Not all legal immigrants are the same; refugees and asylees – persons who are certified victims of persecution elsewhere – have special entitlements that ordinary legal immigrants do not enjoy, which is precisely why developed states grant this status so reluctantly. "Non-immigrants," who are present legally but only for sojourns of limited duration, lack the full range of privileges accorded legal residents. Other persons are present without authorization, but this, too, is a group with legally varying statuses. Some find themselves in a "twilight" zone: they lack permanent residency but may be en route to legal status; thus, they enjoy some protections while remaining vulnerable to deportation.[11] Others qualify for "temporary protected status" – still another liminal category reserved for persons whose presence may be unauthorized, but who have fled countries where disaster, civil war, or some other consideration makes return perilous. Others are simply unauthorized; they are not utterly bereft of rights or protections, but they do without many of the entitlements that citizens take for granted.

Thus, international migration – a product of categorical inequality *among* nations – inevitably produces categorical inequality *within* nations, yielding differences between citizens and aliens and among the various groups of aliens themselves. In the United States, however, the divergence between policy and public preference has caused the differences between those groups to widen. While Americans clamor for tighter borders, policy has veered in a different direction: foreign-born shares of the popula-

tion climbed from 4 percent in 1970 to 12.5 percent as of 2009; annual inflows of legal and undocumented immigration averaged one million during the first decade of the twenty-first century.

To some extent, the dynamics of the political process explain why policy has diverged from public preference.[12] Public views have generally been easy to ignore, as immigration usually ranks far below other issues in salience. Until recently, it has been difficult to draw attention to the issue, in large measure because opposition to immigration has yet to find an acceptable voice. Although some on the political fringe are willing to play the nativist card (activating the type of racist sentiments that fueled restrictionists' efforts a century ago), established political figures are not yet ready to head down that route. However, in contrast to its low position on the public's agenda, immigration has ranked high on the agenda of established interest groups from both the Right *and* the Left. On the one hand, employers are eager to tap into foreign sources of labor (whether high- or low-skilled), and on the other, ethnic groups and human rights activists feel an affinity toward immigrants and want America to be welcoming of newcomers. This coalition of strange bedfellows has long been mobilized to secure policies that produce expanded flows.

While policy favoring expansion has recently been replaced by stalemate, the impasse naturally favors perpetuation of the status quo. Moreover, once begun, migrations have a momentum of their own: the social networks linking settlers in the United States with their friends and relatives abroad reduce the costs and risks associated with migration. This reality is reinforced as settlers earning U.S. wages can effectively absorb the costs produced by ever-tighter restrictions.[13] Once implanted in a workplace, recruitment networks funnel newcomers with great effectiveness; consequently, immigration has steadily diversified across industries and places.[14] Stalemate is also consistent with the front door/back door divide – distinguishing legal from illegal immigration – that has characterized policy for the past nine decades. The government has put the brakes on legal immigration and made illegal border-crossing more difficult and more costly for those willing to take matters into their own hands. But more vigorous measures that might significantly curb illegal immigration have been avoided: by focusing enforcement on the border while abandoning internal enforcement at workplaces, the United States has implicitly opted for a policy that facilitates, rather than constrains, undocumented migration. By making border-crossing a more arduous, costly experience, policy has made the undocumented population both more selective – and therefore better able to avoid further detection – and more eager to settle in the United States for good, as the risks entailed in another unauthorized border-crossing are too much to bear.

To correct the divergence of public policy from the preferences of a public that insists on controls, the course of least resistance has been to widen formal differences between the people *of* the state and all the other people *in* the state. Facilitating that option is the fact that immigrants, though present on the territory, remain outside the polity. Of America's thirty-eight million foreign-born residents, just over one-third are citizens, having acquired the right to vote. Of the remaining two-thirds, roughly one-third is comprised of candidates for citizenship: that is, permanent residents who are deprived of the franchise but enjoy a broad – if

limited – panoply of rights. Another third consists of undocumented immigrants who enjoy far fewer protections and face ever-growing barriers to the transition to candidate-level membership.[15]

Hence, expanding admissions has gone hand in hand with both a restriction on rights and with a growing divergence between demography and democracy. Borders *within* the United States have been sharpened, as de jure inequality between citizens and foreign residents has grown. The rights and protections available to undocumented immigrants have undergone particular contraction. Undocumented immigrants are not utterly deprived of rights: children under age eighteen are guaranteed the right to schooling; and emergency rooms have to accept all patients, regardless of legal status. Otherwise, the pattern is one of exclusion. Once eligible for social security benefits – America's most important and successful program of social provision – undocumented immigrants have lost any means of access. The many who contribute (via false or fraudulently obtained social security numbers) are permanently frozen out of the system, with no chance of ever benefiting from the contributions they make when in unauthorized status.[16] Immigration legislation of the mid-1990s prohibited illegal immigrants from access to federal, state, and local benefits and mandated that state and local agencies verify that immigrants are fully eligible for the benefits they apply for. Undocumented immigrants are not confined to the back of the bus, but the possibility that they might obtain a driver's license is an idea that a majority of voters opposes. At the same time, those voters show no interest in improving mass transit for individuals who are not supposed to drive – many of whom also work for the citizens who do not want to pay for foreigners' hospital bills. Because they lack the right to drive, undocumented immigrants are also deprived of another fringe benefit: the fact that the driver's license has become a de facto identity card.

Moreover, the wall between undocumented immigrants and candidate Americans has become less penetrable. Persons who once crossed the border without authorization can no longer transition to permanent residency without first returning to their home countries for an extended stay; for all practical purposes, unauthorized border entry is grounds for permanent exclusion from the United States. As the last amnesty for undocumented immigrants was approved a quarter-century ago, undocumented status is increasingly a long-term trait. Furthermore, any future amnesty is unlikely to be as generous as the amnesty of the past, which allowed eligible undocumented immigrants to gain legal status quickly. Rather, the more likely course is the one signaled by the last ill-fated effort at comprehensive immigration reform: the 2006 McCain-Kennedy bill that provided a multiyear transition out of undocumented status, with no guaranteed track to citizenship. As of this writing, the prospects for the type of comprehensive immigration reform that could yield amnesty of any sort appear increasingly dim.

Even foreigners interested in lifelong settlement who reside in the United States legally are not guaranteed membership in the people's club; instead, citizenship is carefully rationed and its privileges increasingly restricted. The divide between citizens and permanent residents, which had narrowed in the aftermath of the civil rights era, has once again begun to widen. Legally resident non-citizens are no longer eligible for benefits that are now available to citizens alone; state and local agencies are forced to verify that im-

migrants are fully eligible for the benefits they apply for; and legal residents are at risk of losing their residence rights if they fall seriously afoul of the law.[17] Unlike citizens, legal residents enjoy limited border-crossing rights. Residency rights can be lost if an immigrant has spent more than a year outside the United States; legal residents who received welfare or some other public benefit can lose the right to return to the United States after only 180 days out of the country. Most important, residency is not a guaranteed right: international law forbids governments from expelling their own citizens, but no such bar applies to non-citizens. Indeed, legislation passed in the 1990s made deportation a likelihood for non-citizens guilty of a number of crimes, including minor infractions. Interior deportation, once an unusual occurrence, is becoming a common reality, with deportations up from roughly 114,000 in 1997 to 396,000 in 2009. Though not the majority, immigrants legally present in the United States figure prominently in this group, Mainly long-term residents with family members living in the United States, most were deported for nonviolent crimes.[18]

Moreover, the challenge posed to democracy, given the influx of people living *in* the state who are not *of* the state, is one that Americans have generally preferred to ignore. As the size of the foreign-born population has grown, the proportion obtaining citizenship has declined. Failed efforts at naturalizing residents have become ever more common, and the cost of citizenship acquisition has risen sixfold (from $100 to $600 in constant dollars) over the past twenty years.[19] In contrast to the last era of mass migration, when "alien voting" was a common phenomenon at state and local levels, non-citizens are almost universally barred from the polls. Restriction from the franchise may not bother the individual alien; however, the consequences add up in socially meaningful ways. That disparity between demography and electorate yields concrete effects, in contrast to the turn of the twentieth century, when the state's main job was to get out of the way.

In the twenty-first century, the made-in-America distinctions between citizens and foreigners of different types give the people *of* the state far greater influence than their presence among the people *in* the state would suggest. The case of California – the epicenter of contemporary immigration, containing almost 30 percent of the nation's foreign-born population – demonstrates the dynamics at play. As of 2000, California's whites were a minority of the population but made up 70 percent of the electorate and were overrepresented among voters in 2000 to a greater extent than they had been ten years before. Likewise, people with the traits of white voters – those who are older than fifty-five, do not have children living at home, are well educated, and earn higher incomes – vote, make political contributions, and participate in political parties at far higher rates than the younger, poorly paid, and poorly educated parents who predominate among the foreign-born. Moreover, tomorrow is likely to resemble today: forecasts for 2040 project that whites will make up just 26 percent of California's population but will account for 53 percent of its voters.[20]

What holds true in California applies nationwide, albeit to a lesser degree. The proportion of the adult population lacking citizenship grew from 2 percent in 1970 to 8 percent in 2009. Due to the increasing discrepancy between population and democracy, combined with the low skills and modest earnings of the immi-

grants left outside the polity, the question of "who is what" has had a steadily widening impact on "who gets what." Non-citizens are poorer than citizens, a gap that has substantially widened over the past four decades. Moreover, the poorest of the non-citizens are those most firmly excluded from the polity: two-thirds of the immigrants with less than a high school education are in the United States illegally. But these are also the people whom the citizens entitled to influence policy and most likely to engage with politics are *least* inclined to help. Whereas the median voter has always been more selective – better educated and more affluent – than the median citizen, that discrepancy has remained relatively unchanged. By contrast, the gap between the median voter and the median resident (legal or otherwise) has grown, as the latter has fallen increasingly behind the former. Consequently, redistribution has become less attractive to the median voter because it requires sharing resources with non-citizens. Given that the burden of America's growing inequality has been born disproportionately by non-citizens, the motivations to divide the pie more equitably have correspondingly declined.[21]

In the end, the United States has let circumstances take their course. Deciding not to decide, it has allowed mobility across the border to increase yet has proved unwilling to provide new foreign residents with membership in *the people* of the state. On the contrary, America, like other rich democracies, is doing more to constrain its new foreign residents from trying to get ahead by dint of their own efforts – just like everyone else. Policing the internal boundary between the people *in* the state and the people *of* the state is not attractive, but it is very hard to avoid if and when the external boundary cannot be better controlled. While a democratic state cannot tolerate a (quasi) fixed distinction between citizens and aliens who have long resided in the country, the problem does not appear to be one that disturbs many Americans in their sleep. On the contrary, it seems there is nothing better than gardeners or maids to whom one does not have to attend and whose voices will not ring in the public arena, at least not in the short term. To be sure, policy-making around immigration is always beset by a temporal illusion, focusing on short-term benefits, as opposed to the long-term costs which cannot be evaded. But the problem is that the very pressures making for ever-more trespassable borders are the same that make it easy to ignore the strangers in our midst. The new American dilemma, alas, is here to stay.

ENDNOTES

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